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10/045,789	01/11/2002	Rainer Sommer	10191/2209	3038

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/045,789
Filing Date: January 11, 2002
Appellant(s): SOMMER, RAINER

Gerard A. Messina
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 29, 2006 appealing from the Office action mailed July 25, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,5513,107	Gormley	4-1996
6,184,661	Becker et al.	2-2001

Volkswagen Official Factory Repair Manual, Golf, GTI, Jetta 199-2003, Jetta Wagon 2001-2003; Bentley Publishers; pp. 1-6 through 1-64

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 through 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite the limitations of direct selection of control parameters and indirect selection of control parameters by algorithmic processing of a plurality of bit positions but the specification does not make the difference clear. For direct selection the specification states that one bit position is mapped to a memory location(or locations) in the code memory, but in the case of indirect selection multiple bit positions are used to find a location in code memory. How is that direct versus indirect algorithmic processing? Both ways of selection state that for a bit or bits combination look to a specific a memory location or locations.

Claims 1-5, and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volkswagen official factory repair manual for model year 1999 Jetta/Golf/GTI, in view of Gormley, 5513107.

Volkswagen discloses means for indirect selection of control parameters from the means for storing control parameters by algorithmic processing of values of a plurality of bit positions of the version coding on page 1-29 through page 1-32; direct selection of

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control parameters from the means for storing control parameters as a function of individual bit positions of the version coding on page 1-32; the means for selection is adapted to read control parameters which are contained in the version coding on page 1-32; and means for reading control parameters contained in the version coding on page 1-32. Volkswagen does not disclose means for storing a plurality of control parameters for the different vehicle version; means for storing a version coding for customizing the vehicle controller for a predetermined vehicle version, the version coding having a plurality of bit positions; and the control parameters pertain to values of an electric unit. Gormley teaches means for storing a plurality of control parameters for the different vehicle version on lines 5-7, on column 7; means for storing a version coding for customizing the vehicle controller for a predetermined vehicle version, the version coding having a plurality of bit positions on lines 37-48, on column 4; and the control parameters pertain to values of an electric unit on lines 7-18, on column 5. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Gormley in the invention of Volkswagen because while Volkswagen discloses adapting the controller to a version of a car, Volkswagen does not disclose how the controller will know how to communicate and process the information from the systems in that version of the car. Gormley provides a way to provide that information. For example, the coding in Volkswagen allows specification that there is a brake pad sensor, a seatbelt warning, and a washer fluid level on page 1-32, and then on page 1-6, Volkswagen discloses that the sensors that are available are monitored and DTC can be stored when there are errors. There needs to be some

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programming or control parameters that are activated when the controller is coded for a vehicle with a brake pad sensor, a seatbelt warning, and a washer fluid level that tells the controller how to interact with this equipment.

Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volkswagen official factory repair manual for model year 1999 Jetta/Golf/GTI, in view of Gormley, 5513107, as applied to claims 1, 5, 7, and 11 above, and further in view of Becker et al., 6184661.

Volkswagen and Gormley disclose the limitations as set forth above. They do not disclose the electric unit is a generator. Becker et al. teach of a parameter map for an alternator on lines 19-25, on column 3. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the control parameter setting of Volkswagen and Gormley with the teachings of Becker because such modification would allow the configuration of operating subsystems as disclosed in Gormley. Gormley discloses setting parameters for various subsystems in a vehicle and lists several examples. While an alternator or generator is not specifically cited one of ordinary skill in the art would know that any subsystem that has parameters that can be set could be set with Gormley.

(10) Response to Argument

Appellant begin the arguments by addressing the rejection under 35 U.S.C. 112, first paragraph. Appellant summarizes the rejection and the Examiner's position by stating on page 5, "he cannot discern a difference between an indirect selection as recited in claim 1, and a direct selection as recited in claim 2." This is an accurate

characterization and the remainder of the argument attempts to explain the difference between indirect selection and direct selection but fails. Appellant provides two definitions in the arguments, one for direct selection and one for indirect selection. They are:

Direct selection: selection of a particular memory location based on a direct assignment of one or more bits to that memory location.

Indirect selection: selection of a particular memory location based on an identification of a particular vehicle version.

Appellant states that these definitions are found in the specification but provides no citation and the examiner could not find these definitions in the specification. Appellant tries to differentiate the two selections methods with a two-bit example and by stating that with direct selection four memory locations may be addressed. With indirect selection, the bits do not refer to particular memory locations but instead refer to one of four possible vehicle versions and for each vehicle version the processor can address one of up to four memory locations for each of several possible "memory location sets". The problem with this statement is that the original specification never discloses "memory location sets". These "sets" are completely new matter.

The only probative matter in the entire specification that helps explain what the differences are between direct and indirect selection can be found in the second paragraph on page 3. The important section is:

Individual values of application data memory 30 may be allocated directly to individual items of information in version code memory 10 or they may be allocated indirectly, i.e. individual values are assigned to certain combinations of information of code word memory 10. These combinations are determined by logic links of individual bit positions of version code memory 10. The links are

formed in unit 20. According to the algorithmic processing in unit 20, selector unit 40 is then controlled to access the respective memory locations in application data memory 30.

A thorough analysis of this section will be attempted. Direct allocation seems to mean that individual items of the application data memory are pointed to when certain individual "items" of information in the version code memory are specified. Realistically, nothing can be directly allocated (i.e. selected) unless the version code memory contains the address location of the application data memory item that is being specified. This would require that in order to change the version you'd need to change a whole address in a code memory. This isn't what is envisioned in this invention; instead a bit position relates a memory location. This relation is an indirect link in the control system linking each bit to a memory location. Indirect allocation appears to mean that individual values of application data memory are assigned to certain combinations of information of code word memory. This seems to suggest that more than one bit positions are used to specify a memory location. These bit combinations are related through a logic link or memory pointer to a specific location in the application data memory. However, the direct allocation never states that it was limited to individual bit positions, it states "individual items of information in version code memory" are used. This could easily mean that an individual item is a version number that spans more than one bit position. So if direct and indirect selection both can use multiple bit positions and then both point to a memory location and they both use algorithmic processing to relate the bits to an address since any processor step is algorithmic processing, what is the difference? Considering the originally filed specification, one cannot be discerned.

Adding to the confusion is the statement on page 2, lines 7-9, of the specification. One of the advantages is that with the same code length more vehicle versions can be specified. This doesn't seem possible. With a given bit length there are only so many combinations. For example, with two bits you have four possible vehicle versions. It doesn't seem possible, and it certainly isn't explained how, to specify more vehicle version from these same two bits by "indirect selection".

Returning to Appellant's arguments, in the last two sentences in paragraph 3, on page 5, the Appellant tries to explain how the specification is enabled and describes an "algorithm" that is required for the invention to work. In this section that Appellant states "the processing unit may provide for reading out different memory locations for the same two bit combination of the vehicle version code, depending on the step of the algorithm being executed." This statement only adds more confusion since the specification never discloses anything close to what the Appellant is writing. The specification never discloses that indirect selection using the algorithm is dependant on the step the algorithm is currently executing. It is impossible to discern what this means and how it operates. Appellant is attempting to incorporate new matter into the specification through the arguments.

In light of the lack of enabling disclosure as to how the direct and indirect selections are different the prior art rejections were made using the Examiner's best interpretation. The Appellant's first argument in regards to the prior art rejection is that the Manual does not disclose using bit positions. It is inherent that any numerical value entered into a computer is going to transfer into binary and have bit positions. VW uses

commercially available processors and there are no other types of digital electronics available except for ones based on binary. The Manual describes the procedure for adapting a new instrument cluster (odometer, tachometer, MILs, trip computer, trip odometer, etc.) to the type of car that it is being installed in. This requires the entering of an adaptation code that the table on page 1-32 describes. This adaptation code turns on certain functions or changes how the cluster displays certain information depending on the code. While the Manual isn't specific to where or how the different functions are stored as software, Gormley provides a teaching of different memory locations for different vehicle versions. Based on the lack of an enabling disclosure of what an indirect selection actually is, the teaching of the Manual and Gormley read on the Examiner's best interpretation. That interpretation is that the code word is transformed into a memory location link and points to the software to run the different functions. Also, algorithmic processing can be interpreted as any step the processor performs. The processor in the Manual clearly performs processing steps to read the adaptation code.

The next argument presented by the Appellant is that the Manual does not disclose that the code contains a control parameter. The Manual clearly discloses that whether the vehicle is 4 or 6 cylinder is entered as part of the code word. That is clearly a control parameter.

On a final note, based on the new matter that the Appellant discloses in the brief the cited prior art would still read on the claims. Appellant seems to be stating that direct selection mean one bit position specifies one control parameter while indirect

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selection specifies several parameters at once. For instance, a car manufacturer could say that if a four cylinder engine is specified you can also assume that it has a turbo since all four cylinder cars made by them include a turbo. But the Manual discloses this also. If for example, the cluster is installed in a Canadian car the third digit of the adaptation code would be set as 3. As a result of this, the odometer will read in KM instead of miles, the trip odometer will read in KM, the trip computer will read gas mileage as KM per liter, and the temperature sensor may read in Celsius instead of Fahrenheit if it is so equipped. All these control parameters are indirectly set from one digit. But what the Appellant is stating his claims should be interpreted as now was not supported originally.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

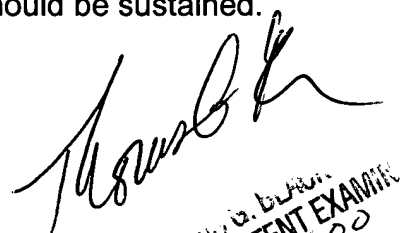
Respectfully submitted,

BJB

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